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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 16th November, 2023
Date of Decision: 16th January, 2024

+ RSA 173/2017

SHIV PRAKASH

..... Appellant

Through: Mr. L.K. Singh, Advocate, through
VC.

versus

MOOL CHAND & ORS

..... Respondents

Through: Mr. R.K. Shukla, Advocate for R-1.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This regular second appeal filed under Section 100 of the Code of Civil Procedure, 1908 ('CPC') impugns the judgment dated 23.03.2017 passed by the ADJ-02, Shahdara District, Karkardooma Courts, Delhi ('First Appellate Court') in RCA No. 98/2016, titled as '**Shiv Prakash v. Mool Chand and Ors.**', whereby the First Appellate Court dismissed the said appeal filed against the judgment dated 12.10.2011 passed by the SCJ – cum – RC, North East District, Karkardooma Courts, Delhi ('Trial Court') in Civil Suit no. 754/2006.



2. The Appellant is the plaintiff, the Respondent No. 1 is the defendant no.1 and the Respondent Nos. 2 to 5 are defendant nos. 2 to 5 respectively. Only Respondent No.1 is contesting the present proceedings. For ease of reference, the parties are being referred to by their original rank and status as was before the Trial Court.

3. The plaintiff's case in brief is that his father, Sh. Jaswant Singh, was the recorded owner of the land, ad-measuring 1 Bigha and 4 Biswas, comprising of Khasra No. 580, Karkardooma Courts, Delhi ('suit land'), which later stood acquired by the Government vide Award No. 54A dated 07.01.1971. It is stated that though the award amount was assessed in the name of late Sh. Jaswant Singh, neither he (during his lifetime) nor the plaintiff, who was impleaded as a legal representative, accepted the said compensation even after its enhancement by the Additional District Judge, Delhi ('Reference Court') in LAC 317/1971. It is stated that the suit land continued to be in actual physical possession of plaintiff and his mother, late Smt. Mohro Devi.

3.1. It is stated that at the time of demise of Sh. Jaswant Singh in August, 1975, the plaintiff was a minor of 14 years of age and his mother, late Smt. Mohro Devi, being illiterate was unable to manage the suit land. It is stated that in these circumstances, late Smt. Mohro Devi sought her cousin brother i.e., the defendant no.1's, help for management and handling of suit land.

3.2. It is stated that the defendant no.1 acceded to the said request and started to manage the suit land, wherein the plaintiff financed and constructed one room and two sheds under the direct supervision of defendant no.1. It is stated that the defendant no.1 inducted the tenants i.e., defendant nos. 2 to 5, in suit land and started collecting rent which was paid over to the plaintiff. It is stated that however, the plaintiff subsequently became aware that the



defendant no.1 has been collecting a higher sum of rent than what was being paid over to the plaintiff.

4. In these facts, the plaintiff instituted the civil suit seeking the following reliefs:

"a) a decree of declaration thereby declaring that the defendant No.1 was only managing the suit property i.e. 1 Bigha 4 Biswas comprising in Khasra No.580, Karkardooma, Delhi on behalf of the plaintiff and was/is having no title or interest whatsoever in the suit property of his own;

b) a preliminary decree for rendition of accounts against defendant No. 1 thereby directing the defendant No. 1 to give a complete and detailed account of all the rents/ receipts made by him by way of letting out different portions of the suit premises from time to time to various tenants including defendants 2 to 5 herein and on such rendition, pass final decree for the balance unpaid amount in favour of the plaintiff and against defendant No. 1.

c) a decree of permanent injunction in favour of plaintiff and against the defendants thereby restraining the defendant No.1 from realising the rent of the different portions of the property in question comprised in Khasra No. 580, Karkardooma, Delhi which has been let out by him to defendants 2 to 5 herein and further the defendants 2 to 5 herein and further the defendants 2 to 5 may be restrained from paying the rent of their respective portions to defendant No.1 in future and they be directed to pay the same to the plaintiff directly;

d) a decree of mandatory injunction whereby the defendant 2 to 5 may be directed by way of mandate to start paying rent of their respective portions in the suit premises i.e. 580, Karkardooma, Delhi to the plaintiff directly.

e) costs of the suit be also awarded in favour of the plaintiff and against the defendant No. 1.

f) such other or further relief as this Hon'ble Court may deem fit and proper, be as well, granted. "

(Emphasis Supplied)

5. The defendant no.1 denied the factual assertions in the plaint. It was stated that late Sh. Jaswant Singh was never in possession of the suit land as held by the Reference Court in the judgment dated 20.07.1976. It was stated that the Reference Court recorded that possession of the land was with the



pattedar, one Sh. Manmohan Lal and accordingly, the compensation was awarded to late Sh. Jaswant Singh and Sh. Manmohan Lal in the ratio of 40:60 respectively. It is stated that the compensation was enhanced by the Reference Court vide the said judgment and late Smt. Mohro Devi and her two daughters withdrew the enhanced compensation from the Reference Court in the year 1976. It is stated that the judgment dated 20.07.1976 has attained finality and in these circumstances, there was no occasion for defendant no.1 to be appointed as the *Pairokar* for management of the suit land. It is alleged that defendant no.1 is in possession of the land in his independent right and claims his possession through his father, Sh. Jassi, who it is alleged himself was a non-occupancy tenant.

6. The Trial Court vide judgment dated 12.10.2011 dismissed the plaintiff's suit holding that since the suit land has been acquired by the Government vide Award No. 54A dated 07.01.1971, the plaintiff has no locus standi to file the suit; and (ii) that the plaintiff has failed to prove that the defendant no.1 was appointed as a *Pairokar* by his mother, late Smt. Mohro Devi, to manage the suit property after the death of his father, Sh. Jaswant Singh.

7. The First Appellate Court as well in the impugned judgment dated 23.03.2017 has held that there is no evidence on record to show that the defendant no.1 acted as a *Pairokar* of the plaintiff and his mother and therefore, the reliefs sought in the suit are not maintainable

8. This Court on 15.02.2022 has framed the following substantial question of law in this appeal:

- i) Whether in a *lis* between private parties, can the relief be denied merely on the ground that the land was an acquired land?



- ii) Whether the plaintiff had established on record that the defendant no.1 was a *paikar* and if so, whether the plaintiff is entitled to relief on preponderance of probabilities?

Arguments of the Appellant i.e., the plaintiff

9. Learned counsel for the Appellant i.e., the plaintiff, states that Sh. Jaswant Singh (father of the plaintiff) was the recorded owner of the suit land. He states that though the suit land stands acquired by the Government, it is a matter of record that the actual physical possession of the suit land was not taken over by the Government. He states that the factum of the suit land being acquired by the Government is not relevant for the reliefs sought in the suit. He states that the reliefs sought are with respect to the private dispute between the plaintiff and defendant no. 1 arising out of their inter-se relationship. He states that the plaintiff is not seeking declaration of his ownership of the suit land as is evident from prayer (a) of the suit. He states that since the Courts below misconstrued the plaint and the declaratory relief sought for therein, the findings returned at issues nos. 1, 4 and 6 are wrong. He states that it is the stand of the plaintiff that defendant no. 1 was engaged by late Smt. Mohro Devi to manage the suit land and the tenants occupying the suit land were inducted by defendant no. 1 for and on behalf of late Smt. Mohro Devi. He states that the physical possession of the suit land was not taken by the Government and remained with the family of the plaintiff. He states that therefore, the present suit seeking rendition of accounts between the parties was maintainable and the fact of acquisition of the land by Government would not affect the maintainability of the suit. He states that therefore, the question of law no. 1 is to be answered in favour of the plaintiff.

9.1. He states that with respect to question of law no. 2, the finding of the Trial Court with respect to issue no. 5 are not based on evidence. He states that



defendant no. 1 has contended that he is in possession of the suit land as the legal representative of his father namely Sh. Jassi. He states, however, the defendant no. 1 has failed to prove the possession of Sh. Jassi. He states that Sh. Jassi or defendant no. 1's name does not find any mention in the revenue record. He states that on the other hand, the ownership of plaintiff's father i.e., Sh. Jaswant Singh and thereafter, plaintiff's mother i.e., late Smt. Mohro Devi, has been unequivocally admitted by defendant no. 1. He states, therefore, the inescapable conclusion is that defendant no. 1 inducted tenants in the suit land in pursuance to the authority granted to him by late Smt. Mohro Devi. He states that defendant no. 1 has been unable to establish any independent right to occupy the suit land. He states the close familial relationship between defendant no. 1 and late Smt. Mohro Devi is admitted on record. He states therefore, on preponderance of probabilities the declaratory relief claimed by the plaintiff at prayer (a) of the plaint ought to have been granted in favour of the plaintiff herein followed by the consequential relief of rendition of accounts and injunction.

Arguments of the Respondent No. 1 i.e., the defendant no. 1

10. In reply, learned counsel for defendant no.1 states that with respect to the first substantial question of law a perusal of the record of the proceedings before the Reference Court would show that the suit land has been acquired and the compensation amount determined by the Reference Court has been withdrawn by the legal representatives of late Sh. Jaswant Singh. He states that Sh. Jaswant Singh was survived by his wife, late Smt. Mohro Devi, his daughters and his son (i.e., the plaintiff herein). He states that late Smt. Mohro Devi and her daughters have all withdrawn their share of compensation. He



states that therefore, the acquisition proceedings have become final and the ownership of the suit land vests with the Government. He states that late Sh. Jaswant Singh was never in physical possession of the suit land and on this finding, the Reference Court had awarded 40% share of the compensation to Sh. Jaswant Singh towards his ownership rights. He states that the Reference Court determined that the physical possession of the said land vested in pattedar Sh. Manmohan Lal. He states that therefore, the plaintiff herein has no locus standi to prefer the suit in respect of the suit land and the question of law no. 1 in the facts of this case has to be answered against the plaintiff.

12.1. He states that with respect to question of law no. 2, as per the record of the Land Acquisition Collector, the physical possession of the suit land did not rest with Sh. Jaswant Singh and therefore, there was no occasion for late Smt. Mohro Devi to possess the same or handover its management to the defendant no. 1 as her *Pairokar*. He states, secondly, admittedly no document in writing between late Smt. Mohro Devi and defendant no. 1 or with the plaintiff for creation of the alleged management rights has been placed on record. He states that a perusal of the testimony of the plaintiff, who examined himself as PW-7 would show that there is no documentary evidence to prove the said self-serving statement. He states that the concurrent finding of the Courts below on this aspect, being a finding of fact, cannot be interfered in second appeal. He relies upon the judgment of the Supreme Court in ***Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and Others.***¹

Analysis and findings

11. This Court has heard the learned counsels for the parties and perused

¹ AIR 1999 SC 2213



the record.

12. The Predecessor Bench of this Court vide order dated 15.02.2022 framed two (2) questions of law. In the facts of this case, since the entire suit of the plaintiff hinges on the proof of the plea that defendant no.1 was the *Pairokar* of late Smt. Mohro Devi, this Court deems it appropriate to first deal with the second question of law, which reads as under:

Whether the plaintiff had established on record that the defendant no.1 was a pairokar and if so, whether the plaintiff is entitled to relief on preponderance of probabilities?

13. The Trial Court dealt with this question of law in its deliberations under issue no. 5. The Trial Court recorded that no documentary evidence has been filed by the plaintiff in support of his claim that defendant no. 1 was appointed as a *Pairokar* by his mother (late Smt. Mohro Devi); and only oral evidence of the plaintiff himself as PW-7 was led in support of the said assertion. The Trial Court after perusing the oral testimony of the plaintiff (PW-7) and the defendant no. 1 (DW-1) concluded that the plaintiff has failed to discharge the burden of proof.

14. The First Appellate Court as well after perusing the evidence on record concurred with the Trial Court on the aforesaid finding on issue no. 5 and held as under:-

“(12) The Court is of the further opinion that Ld. Trial Court has rightly observed that appellant/plaintiff has failed to establish his case. The appellant/plaintiff has not placed on record any Power of Attorney executed by his mother in favour of defendant no. 1 nor any witness has been examined by the plaintiff to prove that the mother of the plaintiff had appointed defendant no. 1 as a Pairokar. The story put forth by the plaintiff/appellant is also unbelievable as the suit land had already been acquired by the government in the year 1975 itself and there was no property which required to be looked after by the mother of the plaintiff. It has also been rightly observed that the appellant/plaintiff has only examined himself to prove the fact defendant no. 1 was appointed as a Pairokar by his mother and



no other witness has been examined by him. In his cross examination, the appellant/ plaintiff has admitted that his father expired in the year 1975 and he was not aware if his mother had executed a power of attorney or authority letter in favour of defendant no. 1 or any other documents for his appointment as Pairokar. Plaintiff also admitted that his mother expired in the year 1996 and he was not aware if his mother had given any notice to the defendant no. 1 for managing the affairs of the suit property but he denied the suggestion that defendant no. 1 was ever appointed as Pairokar by his mother. Respondent /defendant no. 1 in his cross examination denied the suggestion that he was a pairokar in Khasra no. 580 (property no.214 since 1983) in which Pradeep Sood was a tenant of the plaintiff. He also denied the suggestion that Pradeep Sood was a tenant of plaintiff and Smt. Mohro Devi. As such. Learned trial Court has rightly observed that apart from this evidence, there is nothing on record to show that respondent/defendant no. 1 acted only as Pairokar of the appellant/ plaintiff and his mother.

(Emphasis Supplied)

15. Before this Court, the plaintiff has contended that both the Courts below failed to appreciate that plaintiff's father, Sh. Jaswant Singh, was admittedly the recorded owner of the suit land and relied upon the Jamabandi for 1949-50 (Ex. PW-2/1). He states that Sh. Jaswant Singh, passed away in 1975 and it was at this point of time that defendant no. 1 was appointed as the *Pairokar* by late Smt. Mohro Devi. He also relied upon the unregistered documents (i.e., GPA, ATS, Will, receipt) pertaining to a transaction dated 11.10.1984 entered into between late Smt. Mohro Devi and one Mrs. Santosh Goel for sale of 100 sq. yards in Khasra No. 580, which were also signed by defendant no. 1 (Ex.PW-5/1 to Ex.PW-5/3 and Ex.PW-2/1). He states that the said documents record the possession of late Smt. Mohro Devi in Khasra No. 580, which documents were admitted by the defendant no. 1 before the Trial Court. He states that defendant no. 1 has failed to prove any independent right to occupy the suit land. He states that since defendant no. 1 was related to the mother of the plaintiff; on preponderance of probabilities there is a presumption that defendant no. 1 was permitted to occupy the land by the



plaintiff's mother as her *Pairokar*.

16. On the other hand, the defendant no. 1 has contended that the entire premise of the plaintiff that his father late Sh. Jaswant Singh and thereafter, his mother, late Smt. Mohro Devi, was in physical possession of Khasra No. 580 is contrary to the judicial record of the land acquisition proceedings. He states that late Sh. Jaswant Singh was the recorded owner of Khasra No. 580 without possession and relies upon the judgment dated 20.07.1976 passed by the Reference Court. He states that since late Smt. Mohro Devi was never in physical possession of the suit land, there was no occasion for her to handover the management or possession to defendant no. 1 as a *Pairokar*. He states that he is in possession of the suit land in his independent capacity as the legal heir of late Sh. Jassi, a non-occupancy tenant under the kasht pattedar, Sh. Doli.

17. This Court has perused the judgment of the Reference Court dated 20.07.1976, which categorically records that late Sh. Jaswant Singh was not in physical possession of Khasra No. 580. In fact, physical possession was claimed by the pattedar Sh. Manmohan Lal, which claim was upheld by the Reference Court. Accordingly, the Reference Court awarded compensation to the owner and pattedar in the ratio of 40:60. Consequently, the legal heirs of late Sh. Jaswant Singh were held entitled to 40% of the compensation amount. The said judgment of the Reference Court has become final and in fact, the legal heirs of late Sh. Jaswant Singh i.e., his daughters and his widow, late Smt. Mohro Devi, accepted the judgment and withdrew the compensation (falling to their share) on 24.01.1977.

18. Therefore, in view of the judgment of the Reference Court dated 20.07.1976, the assertion of the plaintiff that late Sh. Jaswant Singh and after his death in 1975, late Smt. Mohro Devi was in physical possession of Khasra



No. 580, is not borne out from the record.

19. In the facts of this case, there is no dispute that the acquisition process of Khasra No. 580 is complete and late Smt. Mohro Devi withdrew the compensation amount deposited by the State. The suit land admittedly falls in Khasra No. 580. The Constitution Bench of the Supreme Court in ***Indore Development Authority (LAPSE-5J.) vs. Manoharlal***² has held that after the process of acquisition is complete, the acquired land vests in the State free from all encumbrances with possession and any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land. This position in law has been reiterated by the Supreme Court in ***Delhi Development Authority vs. Anita Singh and Ors***³. Therefore, any exercise of proprietary rights by late Smt. Mohro Devi on the suit land after having withdrawn the enhanced compensation was clearly unlawful and an act of trespass. The documents dated 11.10.1984 relied upon by the plaintiff i.e., Ex.PW-5/1 to Ex.PW-5/3 and Ex.PW-2/1, wherein late Smt. Mohro Devi purports to sell 100 sq. yards in Khasra No. 580 are illegal as she was left with no right, title or interest as on 11.10.1984. For this reason, the Courts below have rightly not taken into consideration the said documents while returning the finding on issue no. 5.

20. The plaintiff's reliance upon the Jamabandi for the year 1949-50 (i.e., Ex.PW-2/1) does not prove the possession of late Sh. Jaswant Singh or late Smt. Mohro Devi in the suit land. The said document expressly records the physical possession of the pattedar Sh. Manmohan Lal and kasht pattedar through Sh. Doli. The plaintiff during his cross examination has admitted that

² (2020) 8 SCC 129

³ (2023) 6 SCC 113



he is not aware of any power of attorney executed by his mother, late Smt. Mohro Devi, in favour of defendant no.1. Therefore, on the basis of evidence led by the plaintiff, he has been unable to establish on record that defendant no.1 was a *Pairokar* of late Smt. Mohro Devi.

21. The entire suit and the arguments of the plaintiff are premised on the submissions that as a legal heir of late Sh. Jaswant Singh, he has a better right in the suit land against the defendant no. 1. This Court finds no merit in this submission of the plaintiff. In view of the judgment of the Supreme Court in *Indore Development Authority* (supra) and *DDA vs. Anita Singh* (supra), late Sh. Jaswant Singh and his legal heirs are left with no right, title or interest in the suit land after the completion of the acquisition process; and there is no evidence on record of their physical possession at any stage.

22. The Courts below have rightly held that the burden of proving issue no.5 was on the plaintiff herein and the plaintiff has failed to discharge the same. This Court does not find any merit in the submission of the plaintiff that it was for the defendant no.1 to prove that he was in possession of the suit land in his independent right as the legal heir of Sh. Jassi (Re: *Anil Rishi v. Gurbaksh Singh*⁴).

23. Therefore, even on preponderance of probabilities, the plaintiff in the facts of this case is not entitled to the relief(s) sought in the suit.

24. This Court is therefore of the considered opinion that the question of law no. 2 is to be answered against the plaintiff as he is not entitled to any relief in the suit.

25. In view of the aforesaid observations, this Court is now proceeding to

⁴ (2006) 5 SCC 558



deal with question of law no.1 which reads as under:

Whether in a lis between private parties, can the relief be denied merely on the ground that the land was an acquired land?

26. The Trial Court in its deliberations on issue nos. 1, 4 and 6 after considering the judgment dated 20.07.1976 passed by the Reference Court concluded that (i) the plaintiff herein (i.e., one of the legal heirs of late Sh. Jaswant Singh) was left with no right, title or interest in the suit land; and (ii) the land stood vested in the Government. And, therefore, the plaintiff has no locus standi to file the present suit.

27. The First Appellate Court concurred with the findings of the Trial Court and observed that in the facts of this case, the declaration sought by the plaintiff that he is the owner of the suit land and has the symbolic possession cannot be maintained. The relevant portion of the impugned judgment of the First Appellate Court reads as under: -

“(8) I have considered the rival contentions both oral and written and also perused the Trial Court record and the impugned judgment.

(9) Perusal of the record reveals that there is a categorical admission on the part of the plaintiff/appellant in his plaint that land measuring 1 Bigha 4 biswas forming part of Khasra No. 580 has been acquired by the government. Hence, appellant does not have any right, title or interest in the suit property.

(10) Perusal of the record further reveals that plaintiff/appellant has sought relief for declaration that he should be declared owner in actual and symbolic possession of the suit property measuring 1 Bigha 4 Biswas. This court is of the considered opinion that Ld trial Court has rightly observed that the relief for declaration filed by the appellant/plaintiff is barred as the plaintiff has admitted that the government had acquired the aforesaid land vide award no. 54 A of 1969-70 and the father of the plaintiff had filed appeal for enhancement of compensation. Even though, the actual physical possession of the property may not have been taken by the government but with the acquisition proceeding attaining finality the plaintiff was left with no light, title or interest in the aforesaid land. Hence this court is of the considered opinion that Ld. Trial Court has rightly observed that admittedly, the acquisition proceedings have not been challenged by the plaintiff and Article 58 of Limitation Act 1963



provides for 3 years for obtaining a declaration and the period of limitation begins to run from the time when the right to sue first accrues and in the present case the plaintiff has averred in para 3 of the plaint that he was a minor at the time of death of his father in August 1975 and he was aged about 14 years at that time. In such a situation. Section 6 of the Limitation Act provides that where a person entitled to institute a suit is a minor, he may institute his suit within the same period after he has ceased to be a minor. Despite the fact that the plaintiff had an option of filing a suit for declaration for his ownership qua the suit property within a period of three years after attaining the age of majority, no such suit was filed by the plaintiff/appellant herein.”

28. Before this Court, it is contended by the plaintiff that the Trial Court in its judgment dated 12.10.2011 erroneously observed that in the suit, the plaintiff was claiming declaration to the effect that he be declared the owner of the suit land. The plaintiff contended that no such declaratory relief has been sought and the Trial Court has misconstrued the plaint. This was also contended in the written submissions dated 08.08.2023.

29. However, the aforesaid submissions of the plaintiff before this Court are incorrect and contrary to the pleadings and evidence led by him, wherein he has unequivocally stated that he seeks a declaration of ownership from the Trial Court. The relevant portion of the plaintiff's evidence affidavit dated 18.11.2005 (Ex. PW-7/A) reads as under: -

*“10. That the defendant no.1 Sh. Mool Chand is trying to usurp my rights in the property detailed above and the defendant no.1 is also interested in denying my right in the said land **which I am legally entitled to and in order to re-establish to the rights in the said land, I has filed the present suit to perfect my right and title in the said land, as I had filed the present suit for declaration to the effect that I am the owner/landlord of property measuring 1 Bighas 4 Biswas of land comprising of Khasra No. 580, Village Karkardooma, Delhi.** This suit for declaration has also been necessitated since a cloud has been caste on the title of mine because of the acts of defendant no.1 Sh. Mool Chand.”*

(Emphasis Supplied)

30. The intent of the plaintiff to seek a declaration of ownership is also evident from the reliefs sought in the amended plaint dated 08.03.2001,



wherein the plaintiff sought relief of declaration, rendition of accounts, permanent injunction and mandatory injunction. The grant of the said reliefs against the occupants of the suit land would necessarily require the Trial Court to first determine the rights/entitlement of the plaintiff to collect the rents from the said occupants.

31. In the facts of this case, the principle of estoppel envisaged under Section 116 of the Evidence Act, 1872 ('Act of 1872') is not attracted as the plaintiff has failed to establish from record any evidence, which would show the existence of relationship of licensor or licensee between the plaintiff and defendant no. 1. The allegation of the plaintiff that defendant nos. 2 to 5 were inducted as occupants in the suit land by defendant no. 1 at the behest of late Smt. Mohro Devi was not proved. The allegation of the plaintiff that defendant no. 1 collected rent from defendant nos. 2 to 5 and remitted the same to Smt. Mohro Devi or the plaintiff was also not proved. In fact, there was complete absence of evidence on this issue of fact.

32. Therefore, in the facts of this case since the evidence in support of the reliefs was led by the plaintiff on the basis of title to the suit land, the Trial Court and the First Appellate Court rightly held that since the plaintiff's predecessor's title in the suit land stood extinguished in pursuance to the land acquisition proceedings initiated and concluded by the Government under the Land Acquisition Act, 1894, the plaintiff cannot maintain this suit.

33. In the facts of this case, since the plaintiff himself does not have any title in the suit land and he has been unable to prove that defendant no. 1 was permitted to enter and manage the suit land as a licensee by Smt. Mohro Devi, the present suit filed by the plaintiff seeking rendition of accounts in respect of an acquired land (on the basis of the extinguished title of his predecessor) is



not maintainable. The question of law no. 1 is accordingly answered against the plaintiff.

34. To maintain a suit for reliefs pertaining to immovable property, the plaintiff would ordinarily have to show his independent subsisting title in the immovable property.

There is an exception to this rule, wherein, a person in established possession of land has been held to have a good title against all the world but the rightful owner. Consequently, a trespasser, who is in settled possession of the immovable property can maintain a suit for injunction against a party seeking to interfere in his possession. This exception is founded on the principle that no person should be dispossessed except in accordance with due process of law. The said exception is not attracted to the facts of this case, since admittedly the plaintiff herein is not in established possession of the suit land. (Re: *A. Subramanian and Another vs. R. Pannerselvam*⁵)

The other exception, which enables a plaintiff who does not have title to maintain a suit for an immovable property, is recognised under Section 116 of the Act of 1872, which prevents a tenant and/or a licensee from denying the title of the landlord and/or the licensor. This exception is founded on the doctrine of estoppel and is statutorily recognised in the Act of 1872. To attract this principle, the plaintiff has to prove the existence of the relationship of landlord and tenant or licensor and licensee with the defendant no.1. In the facts of this case, the plaintiff has been unable to prove the existence of the relationship of licensor and licensee between the parties to the present suit; and therefore, this exception is also not attracted.

⁵ 2021 3SCC 675



Therefore, the Trial Court having concluded that the plaintiff failed to prove issue no. 5 and had no right, title or interest in the suit land, correctly held that the suit was not maintainable.

35. In view of the aforesaid observations, this Court does not find any merit in this appeal and the same is accordingly, dismissed. The impugned order passed by the First Appellate Court and the Trial Court are upheld. Pending applications, if any, stand disposed of.

36. It is clarified that nothing in this judgment shall be construed as the entitlement of Respondent No. 1 to commercially let out shops at suit land or transact in the suit land, which is Government acquired property, and make monetary gains therefrom. In view of the orders of the Reference Court in the land acquisition proceedings, which are admitted by Respondent No.1; the said Respondent as well is a trespasser and has no right, title or interest to occupy the said land.

The Respondent No.1 will not be entitled to rely upon this judgment as a recognition of his right to deal with the suit land. The suit has been dismissed on the finding that the plaintiff does not have any right, title or interest in the suit land and therefore, cannot maintain the said suit.

The Municipal Corporation of Delhi or the competent authority is at liberty take requisite actions against Respondent No.1 for removing the encroachment in accordance with law.

MANMEET PRITAM SINGH ARORA, J

JANUARY 16, 2024/rhc/aa